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NOTICE

The undermentioned *Gazettes of India Extraordinary* were published upto the 9th October, 1958:—

Issue No.	No. and date	Issued by	Subject
95.	No. 266-T (1)/58, dated 6th October, 1958.	Lok Sabha Secretariat	Order for proroguing the Lok Sabha.
	No. R.S. 1/3/58-L, dated 6th October, 1958.	Rajya Sabha Secretariat	Order for proroguing the Rajya Sabha.
	No. 34(6)-TMP/FMC/58, dated 6th October, 1958.	Ministry of Commerce and Industry.	Acceptance of the recommendations of the Forward Markets Commission for extension of the exemption of certain regulations under the Forward Contract (Regulation) Act, 1952.
96	No. 37(1)-T.R./58, dated 9th October, 1958.	Do	Acceptance of certain recommendations of the Tariff Commission on the continuance of protection to the Calcium Carbide Industry.
97	No. F.266-T(1)/58, dated 9th October, 1958.	Lok Sabha Secretariat	Order summoning the Lok Sabha.
98	No. 27-CC/58, dated 9th October, 1958.	Lok Sabha.	Directions by the Speaker under the rules of Procedure of Lok Sabha.

Copies of the *Gazettes extraordinary* mentioned above will be supplied on Indent to the Manager of Publications, Civil Lines, Delhi. Indents should be submitted so as to reach the Manager within ten days of the date of issue of these Gazettes.

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PART I—Section 1

Notifications relating to Non-Statutory Rules, Regulations and Orders and Resolutions issued by the Ministries of the Government of India (other than the Ministry of Defence) and by the Supreme Court

MINISTRY OF EXTERNAL AFFAIRS

New Delhi, the 18th October 1958

No. 670-UNI/58.—The Government of India have declared 24 October 1958 to be the United Nations Day.

OM PRAKASH, Under Secy.

MINISTRY OF FINANCE

(Department of Economic Affairs)

RESOLUTIONS

New Delhi, the 14th October, 1958

No. F.22(5)-NS/58.—Smt. Sujata Banerjee, 16, Hazara Road, Calcutta (26) is appointed Chairman, State Advisory Board, Women's Savings Campaign, West Bengal set up in this Department's Resolution No. F.8(14)-NS/56, dated the 29th October, 1956 *vice* Smt. Phulrenu Guha, who has resigned.

No. F.4(3)-NS/56.—It is hereby notified that Shri Shriman Narayan has resigned his membership of the National Savings Advisory Committee announced in this Ministry's Resolution of even number, dated the 22nd September, 1956 published in the Gazette of India, Extraordinary—Part I Section 1, dated the 22nd September, 1956.

M. L. VARMA, Under Secy.

MINISTRY OF COMMERCE & INDUSTRY

New Delhi, the 8th October, 1958

No. 42-SSI(B)(5)/55.—The date for submission of the report by the Committee constituted in the Ministry of Commerce and Industry Resolution No. 42-SSI(B)(5)/55, dated the 6th January, 1958 to offer suggestions and recommendations for development of Coir Industry on co-operative lines is hereby further extended to the 30th November, 1958.

S. R. BANERJEE, Under Secy.

(Office of the Chief Controller of Imports and Exports)

ORDERS

New Delhi, the 14th October, 1958

No. CCI/SPE/227/58.—Whereas M/s. Fedco Private Ltd. Mafatlal House, Back Bay Reclamation, Bombay-1 or any Bank or any other person have not come forward furnishing sufficient cause, against Notice No. CCI/SPE/227/58/1012 dated 24th September, 1958 proposing to cancel the following import licences:—

No.	Date	Value	Description of goods
1. E812609/57/EI/CCI/B/NQQ	18-8-58	Rs. 8 lakhs	Vat Dyes & Fast Colour Basis.
2. E812662/57/EI/CCI/B/NQQ	4-9-58	3.75.000	Hydrosulphite of Soda, Rangolite "C" and Sodium Nitrite.
3. E756172/57/EI/CCI/B/NQQ	24-7-58	5 lakhs	Solubilised Vat Dyes.
4. E756173/57/EI/CCI/B/NQQ	24-7-58	5 lakhs	Textile Auxiliaries.
5. E812610/57/EI/CCI/B/NQQ	18-8-58	7 lakhs	Pigment Printing, Dyestuff and Ancillary products.

from the Soft Currency Area except South Africa, granted to the said M/s. Fedco Private Limited, Mafatlal House, Back Bay Reclamation, Bombay by the Jt. Chief Controller of Imports and Exports, Bombay, Government of India, in the Ministry of Commerce and Industry, in exercise of the powers conferred by clause 9 of the Imports (Control) Order, 1955, hereby cancel the said licences Nos. (i) E812609/57 dated 18th August, 1958, (ii) E812662/57 dated 4th September, 1958, (iii) E756172/57 dated 24th July, 1958 (iv) E756173/57 dated 24th July, 1958 and (v) E812610/57 dated 18th August, 1958 issued to the said M/s. Fedco Private Limited., Mafatlal House, Back Bay Reclamation, Bombay.

No. CCI/SPE/228/58/1147.—Whereas M/s. Wakefield Paints Private Ltd., "Dhan-nur", Sir Pherozshah Mehta Road, Bombay-1 or any Bank or any other person have not come forward furnishing sufficient cause, against Notice No. CCI/SPE/228/58/1011 dated 24th September, 1958 proposing to cancel the following import licences:—

No.	Date	Value	Description of goods.
1. E812656/57/EI/CCI/B/NQQ	3-9-58	Rs. 4 lakhs	Textile Auxiliaries.
2. E812668/57/EI/CCI/B/NQQ	9-9-58	4 lakhs	Pigment Printing, Dyestuff and Ancillary Products.
3. E812663/57/EI/CCI/B/QQ	5-9-58	4 lakhs	Vat Dyes & Fast Colour Basis.
4. E812655/57/EI/CCI/B/NQQ	3-9-58	4 lakhs	Solubilised Vat Dyes.

from the Soft Currency Area except South Africa, granted to the said M/s. Wakefield Paints Private Ltd. "Dhan-nur" Sir Pherozshah Mehta Road, Bombay-1, by the Joint Chief Controller of Imports and Exports, Bombay, Government of India, in the Ministry of Commerce and Industry in exercise of the powers conferred by clause 9 of the Imports (Control) Order, 1955, hereby cancel the said licences Nos. (i) E812656/57 dated 3rd September, 1958, (ii) E812668/57 dated 9th September, 1958, (iii) E812663/57 dated 5th September, 1958 and (iv) E812655/57 dated 3rd September, 1958 issued to the said M/s. Wakefield Paints Private Ltd., "Dhan-nur" Sir Pherozshah Mehta Road, Bombay-1.

S. N. BILGRAMI,
Chief Controller of Imports & Exports.

MINISTRY OF FOOD & AGRICULTURE

(Department of Agriculture)

(I.C.A.R.)

New Delhi, the 27th September 1958

No. F.29(13)/58-CDN.—Under Rules 2(33)(e) and 41(20) of the Rules of the Indian Council of Agricultural Research, Shri P. B. Kurup, a member of the Indian Central Coconut Committee, has been re-elected by that Committee as its representative on the Council and its Advisory Board for a period of three years with effect from the 30th April, 1958.

R. D. MOHINDRA, Under Secy.

(I.C.A.R.)

RESOLUTION

New Delhi, the 27th August 1958

No. 26(10)/57-A.H.II.—In partial modification of the Government of India, Ministry of Food & Agriculture (I.C.A.R.) Resolution No. F.26(1)/54-A.H.II, dated the 29th October, 1954, the Constitution of the Executive Committee of the Interim Indian Veterinary Council has been revised as under:—

(1) Cairman of the Executive Committee—Chairman of the Interim Indian Veterinary Council.

(2) A nominee of the Central Government.

(3) Two representatives of the State Governments.

(4) Two Veterinary non-official representatives.

All the five members will be elected from amongst the members of the Council. The two Veterinary non-official representatives shall be elected one each, from amongst the "members representing the State Veterinary Association" and "members representating Veterinary profession, including veterinary Journalism, retired veterinary officers and private practitioners."

M. S. RANDHAWA, Additional Secy.

MINISTRY OF EDUCATION

New Delhi, the 14th October 1958

No. F.17-1/58-S.W.6.—In pursuance of the Government of India, Ministry of Education Resolution No. F.17-1/58 S.W.6, dated the 13th August, 1958 the Government of India have been pleased to appoint the following members for the period of three years on the National Advisory Council for the Education of the Handicapped with effect from the date of issue of this notification:—

1. Shri R. P. Naik, Joint Educational Adviser, Ministry of Education—*Chairman.*
2. Dr. R. K. Bhan, Deputy Educational Adviser, Ministry of Education—*Secretary.*
3. Lt. Col. Jaswant Singh, Director General Health Services, New Delhi.
4. Shri R. S. Krishnan, Secretary, Central Social Welfare Board, New Delhi.
5. Shri K. L. Joshi, Director, Education Division, Planning Commission, New Delhi.
6. Shri A. Qadir, Director General, Resettlement and Employment, Ministry of Labour & Employment, New Delhi.
7. One representative of the Ministry of Finance.
8. Shri Edward Jonathan, Principal, School for the Blind, Palam Cottah (S. INDIA).
9. Shri U. A. Basrurkar, Honorary Secretary, Blind Relief Association 65, Babar Road, New Delhi.
10. Shri P. M. Advani, Theosophical Society Banaras.
11. Shrimati Savitri Nigam, M.P., Rajya Sabha, New Delhi.
12. Shri Bipin Behari Choudhry, Principal, All Orissa Deaf & Dumb School, Bhubaneshwar (Orissa).
13. Shrimati Evelyn Khanl, Principal, Deaf & Dumb School, Lucknow.
14. Shri A. C. Sen, Principal, Government Lady Noyce School for the Deaf & Dumb, New Delhi.
15. Dr. C. A. Amesur, M.S. (London) E.N.T. Specialist, 93, Queens Road, Fort, Bombay-1.
16. Shrimati Kamla V. Nimbkar, Former Director, School of Occupational Therapy Amerind 15th Road, Khar, Bombay.
17. Mrs. Fatema Ismail, President Fellow Ship for the Physically Handicapped, Patel Manzila Nepean Sea Road, Bombay.
18. Dr. P. K. Duraiswami, Orthopaedic Surgeon, Safdarjang Hospital, New Delhi.
19. Dr. B. D. Bhatia, Lecturer of Psychology, College of Nursing, New Delhi.
20. Dr. K. R. Masani, Practising Psyehiatrist, Cumbatta Chambers, 42, Queen's Road, Bombay.
21. Dr. C. M. Bhatia, Deputy Director of Education, Allahabad.
22. Dr. M. V. Govindaswamy, Director, All India Institute of Mental Health, Bangalore.
23. Dr. S. N. Kaul, M.B. Ch B (Edin), Eye, Ear, Nose & Throat Surgeon, Ganga Ram Hospital, New Delhi.
24. Shri K. C. Kunhammaman Raja, B.Sc., B.T., Principal, Deaf & Dumb School, Chunangad.
25. Prof. B. N. Sinha, F.R.C.S., Professor of Orthopaedic Surgery Medical College, Lucknow.
26. Dr. D. Ganguly, Budhi Peet, 20, Hari Nath D. Road, Calcutta.
27. Dr. D. Ram, Vice Chancellor, Bihar University, Patna.

By order,
R. K. BHAN,
Dy. Educational Adviser.

MINISTRY OF TRANSPORT & COMMUNICATIONS

(Department of Transport)

(Transport Wing)

ERRATUM

In the Ministry of Transport and Communications (Department of Transport) (Transport Wing), Resolution No. 17B-PG(22)/58, dated the 6th June 1958, published in the Gazette of India, Part I, Section 1, dated the 21st June 1958 at page 185 the following correction is to be made:—

Para 4—Line 1 *for* the figures "Rs. 31,79,742" *read* "Rs. 81,79,749"

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 9th October 1958

No. LRII/55-6(32)/57.—The following decision of the Industrial Tribunal, Nagpur, in respect of the matter referred to it under section 36 A of the Industrial Disputes Act, 1947 (14 of 1947) by the Order of the Government of India in the Ministry of Labour and Employment No. S. O. 300, dated the 12th March, 1958 seeking the correct interpretation of paragraph 652 of the Award of the All India Industrial Tribunal (Colliery Disputes), is hereby published for general information.

BEFORE SHRI P. D. VYAS, CENTRAL GOVERNMENT INDUSTRIAL NAGPUR AT BOMBAY

REFERENCE (CGIT) No. 2 OF 1958

The employers of certain Coal Mines.
(The Singareni Collieries Company Ltd.)

AND

Their workmen (S. C. Workers' Union).

In the matter of interpretation of paragraph 652 of the Award of the All India Industrial Tribunal (Colliery Disputes).

APPEARANCES:

Shri D. Narshing, Advocate, assisted by Shri N. Bhaskarachary, Personnel Manager—*for the Company.*

Shri D. S. Nargolkar, Advocate—*for the Workmen's Union.*

DECISION

An industrial dispute between the employers in relation to certain coal mines and their workmen was referred for adjudication to the All India Industrial Tribunal (Colliery Disputes) and its award was published in the Gazette of India Extraordinary, Part II, Section 3, dated the 26th May, 1956.—*vide* S.R.O. 1221, dated the 18th May, 1956, WHEREAS in the opinion of the Central Government a doubt has arisen as to the correct interpretation of paragraph 652 of the said award on the question specified in the Schedule annexed to the Government Order of Reference LR-II-55-6(32)57, Government of India, Ministry of Labour and Employment, dated 12th March, 1958, it has in exercise of the powers conferred by section 36A of the Industrial Disputes Act, 1947 referred the said question for decision to me under the said order. The question specified in the Schedule is:—

> "Whether the pushing allowance of Rs. 0-1-0 per ton (it should be tub) awarded by the Tribunal to fillers in paragraph 652 of the said award is for pushing a tub to the tramming point irrespective of the distance or it is for every 100 feet or part thereof."

2. On the usual notices being issued to the concerned parties, *viz.* the General Manager, Singareni Collieries Company Ltd., Kothagudium, and the Workers Union, Singareni Collieries Company Ltd., they have filed their respective statements in writing.

3. The case of the Singareni Colliery Workers' Union as representing the employees is that the management of the Singareni Collieries Company Ltd. has implemented the direction in the said paragraph 652 of the Colliery Award by paying a flat rate of 0-06 Np per small tub of 24 cft. and 0-09 Np. per 36 cft. big tub irrespective of the distance pushed. The pushing allowance as fixed under the said paragraph 652 of the Colliery Award, however, is payable for every 100 feet pushed and is based on the distance. The management should, therefore, pay pushing allowance on the basis of the distance pushed *i.e.*, Rs. 0-1-0 per tub of 24 cft. and Rs. 0-1-6 per tub of 36 cft. for every 100 feet distance or part thereof. Even paragraph 194 of the decision of the Appellate Tribunal dated 29th January 1957 in the Collieries Appeals lays down:

> "The miners have been allowed a consolidated payment of one anna for every 100 feet or part thereof in excess of the first 100 feet for pushing empty tubs....".

It is thus clear that the fillers of Hyderabad should be paid pushing allowance for every 100 feet based on the distance. The workers' representatives have since entered into an agreement on 12th September 1957 with regard to pushing allowance but the Union's claim is that the same should be implemented with retrospective effect from 26th May, 1956. The management, however, did not agree and stated that as the question of pushing allowance is pending before the Government for decision, the management would follow such decision as may be given by the Government.

4. The case of the Singareni Collieries Company Ltd., is that whatever might have been the doubt or dispute as to the correct interpretation of the provisions in paragraph 652 of the Colliery Award, on the date of the present Reference, *viz.*, 12th March, 1958 there was no dispute between the parties regarding any such interpretation so as there could be any occasion for making the present Reference. On 12th

September 1957, the parties have entered into an agreement regarding the interpretation and implementation of the said provisions of the Colliery Award and under it the implementation is to take effect from 1st September 1957 which has already been done. Since after this agreement, there could remain no dispute about the interpretation of the provisions in paragraph 652 of the Colliery Award and hence the present proceeding is redundant. As it can be seen from the relevant provisions in the award with respect to the different States, in the States of West Bengal and Bihar, the miners, whose normal duties do not include pushing of tubs, are given a preferential treatment in the matter of remuneration for pushing tubs, over the fillers in the collieries concerned in the present Reference or the loaders-*cum*-trammers in the State of Madhya Pradesh or miners in the State of the then Vindhya Pradesh whose normal duties include pushing of loaded tubs. The miners and loaders in the States of Bihar and West Bengal have been awarded remuneration in direct proportion to the length over which the tubs are pushed, subject to a minimum distance for which no remuneration is payable. In the other States, the rate awarded is irrespective of the distance over which the tubs are pushed or trammed, with the exception that in the collieries concerned in the present Reference a minimum distance of 100 feet, has been laid down for which no remuneration is payable. The fillers in terms of the provisions contained in paragraph 652 of the award read with paragraph 648 thereof are not entitled to any remuneration for pushing tubs, loaded or empty, for any distance less than 100 feet and are entitled to Re. 0-1-0 or Rs. 0-06 nP. per tub regardless of its size for any distance beyond 100 feet irrespective of the length over which the tubs are pushed.

5. Under the newly inserted section 36A in the Industrial Disputes Act, 1947, if, in the opinion of the appropriate Government, any difficulty or doubt arises as to the interpretation of any provision of an award or settlement, it may refer the question to such Labour Court, Tribunal or National Tribunal as it may think fit. The Labour Court Tribunal or National Tribunal to which such question is referred shall, after giving the parties an opportunity of being heard, decide such question and its decision shall be final and binding on all such parties. In the present case in the opinion of the Central Government a doubt having arisen as to the correct interpretation of paragraph 652 of the Colliery Award on the question specified above, it has, in exercise of the powers conferred by section 36A of the Act referred the said question to this Tribunal for decision. It may be noted that the only function of the Tribunal in the present Reference under Section 36A of the Act is to give correct interpretation of the provisions continued in paragraph 652 of the Colliery Award on the said question. It would thus be outside the scope of the present Reference to decide any other questions or to grant any such additional reliefs as asked for in the statement filed on behalf of the workmen.

6. An industrial dispute between the employers in relation to certain collieries and their workmen was referred for adjudication to the All India Industrial Tribunal (Colliery Disputes) and its award (referred to herein as Colliery Award) was published in the Gazette of India Extraordinary, Part II, Section 3, dated the 26th May, 1956 by S.R.O. 1224, dated the 18th May, 1956. It was an All India Industrial Tribunal which was called upon to adjudicate on certain matters in dispute between employers in relation to certain coal mines and their workmen. These coal mines are situated in different States of India. In Chapter XV of the Award, the questions relating to mines in different States have been considered and Section IV beginning with paragraph 637 relates to the collieries situated in the then State of Hyderabad. I was told that the Singareni Collieries Company Ltd. has got several mines, all in Hyderabad State now merged in the State of Andhra and admittedly the provisions laid down in paragraph 652 in the said Section IV do govern the said company and its workmen. The said paragraph 652 provides:—

> "In the case of fillers, it has been found that they can fill 3 tubs of 24 cft. each. We fix the basic rate per tub at Re. 0-6-0. In addition they will get a consolidated allowance of Re. 0-1-0 for every tub pushed to the tramming point where the distance exceeds 100 feet or part thereof."

Obviously, in making the provision as per the said paragraph 652 there was before the mind of the Tribunal a case of the fillers filling 3 tubs of 24 cft. each and for this purpose the basic rate per tub was fixed at Re. 0-6-0. I was told that the tub is near the coal-face and this to be pushed by hands up to the tramming point where the tub is attached to a haulage rope which is pulled by an engine called hanler. Thus the tramming point is where the tub can be attached to the said haulage rope. The paragraph 652 of the Award therefore further provides that fillers, in addition will get a consolidated allowance of Re. 0-1-0 for every tub pushed to the tramming point where the distance exceeds 100 feet or part thereof.

7. It is these words "where the distance exceeds 100 feet or part thereof" which gave rise for disagreement between the parties on the point of interpretation. The management took the view that this pushing allowance of Rs. 0-1-0 for pushing tubs up to the tramming point was to be paid for any distance. In other words, the case of the management was that Re. 0-1-0 was to be paid for every tub pushed irrespective of the distance and this has been made clear in paragraph 23 of its written statement which runs thus:

> "That the fillers in terms of the provisions contained in paragraph 652 of the Coal Award read with paragraph 648 thereof are not entitled to any remuneration for pushing tubs, loaded or empty, for any distance less than 100 feet and are entitled to Re. 0-1-0 or Rs. 0-06 nP. per tub regardless of its size for any distance beyond 100 feet irrespective of the length over which the tubs are pushed."

The words used in this paragraph "loaded or empty" as well as the words "regardless of its size" raise further points which need not be discussed at this stage but what the management's stand was on the point of distance is clear, namely, that one anna is the rate for any distance beyond 100 feet irrespective of the length over which the tubs are pushed.

8. That this view is entirely erroneous is at once clear from the language used in the paragraph 652 itself, *viz.* "where the distance exceeds 100 feet or part thereof". If the Tribunal meant to provide Re. 0-1-0 irrespective of any distance beyond 100 feet, then the language used would have been: "whatever may be the distance beyond or in excess of 100 feet"; or the language as actually used would have stopped with the words "where the distance exceeds 100 feet"; or for the sake of clarity the words "or more" would have been added thereto so as to read "where the distance exceeds 100 feet or more". The expression as it occurs in paragraph 652 however is: "where the distance exceeds 100 feet or part thereof" and given a practicable and reasonable interpretation, this should mean that Re. 0-1-0 is the rate as per the distance beyond 100 feet for every 100 feet or part thereof. Thus up to 100 feet nothing would be payable but if the distance exceeds 100 feet or part thereof, then a consolidated allowance of one anna has to be paid for every further excess of 100 feet or part thereof. By way of analogy we may refer to paragraph 604 of the Colliery Award in section 1 of the said chapter XV relating to the States of Bihar and Bengal along with paragraph 194 of the decision of the Labour Appellate Tribunal of India in the collieries appeals dated 29th January, 1957. In the said paragraph 604 the demand considered is that where miners are required to push tubs, whether empty or full, the miners should be paid extra where the distance exceeds 100 feet at the rate of Re. 0-1-0 for every 100 feet. Shri Ginwalla on behalf of the Indian Mining Association opposed this demand but the Tribunal observed:

> "We agree that it is not the duty of the miners to push the tubs; it is the trammers' job. If there is any distance limit for the trammers in any of the collieries and if miners are asked to push tubs, it is only reasonable that they should be paid a consolidated payment of Re. 0-1-0 for every 100 feet or part thereof in excess of the first 100 feet."

No doubt this provision in paragraph 604 applies to miners working in the collieries in the States of Bihar and Bengal but the principle involved cannot be different. The principle followed in laying down the rate seems to be that a consolidated payment of Re. 0-1-0 is according to the distance covered *i.e.*, for every 100 feet or part thereof in excess of the first 100 feet.

9. Besides, if we refer to the paragraphs 645 and 653 of the Colliery Award, the considerations which apply in certain matters relating to Bengal and Bihar have also been held good in the State of Hyderabad. Paragraph 645 refers to the arguments advanced by Shri Ginwalla, thus:

> "On behalf of the employers for Hyderabad Collieries Shri Ginwalla has stated that his general arguments in the case of Bengal and Bihar would apply to Hyderabad. He has stated that the categorisation for Bengal and Bihar may be applied to Hyderabad also, but in view of the fact that there are certain other jobs in Hyderabad a certain amount of elasticity would be necessary in applying that categorisation to Hyderabad. The employers have no objection to time rates being fixed for the coal cutters, but they would want the fillers to continue on a piece-rated basis....".

Similarly the paragraph 653 states:—

> "The wagon loaders will get as basic wage 0-4-0 per ton as in the case of Bengal and Bihar. Piece-rated workers not specifically covered will get a rise of 25 per cent over their present basic wages. Stone cutters will be placed in Category VI. The categorisation for this State (Appendix XIII) and the categorisation for Bengal and Bihar (Appendix XII) are to be treated as supplementary to each other so that they may be made to cover as many jobs as possible and help in the process of fitting into the categorisation jobs in the various States not specifically covered."

It may be noted that Shri Ginwalla for the Hyderabad employers insisted that the fillers should continue on a piece-rated basis. And it is an undisputed fact that the fillers with whom we are now concerned for applying the provisions in paragraph 652 of the Award are the piece-rated workers. If in pushing a tub to the tramming point the distance was not to matter for the purposes of Re. 0-1-0 allowance, naturally the fillers as piece-rated workers would suffer, inasmuch as the time taken as well as the exertion involved would very much depend on the distance. To my mind therefore the Tribunal in making the provisions in paragraph 652 of the Award has given the pushing allowance of Re. 0-1-0 for every tub pushed to the tramming point according to distance *i.e.* for every 100 feet or part thereof in excess of first 100 feet.

10. On behalf of the employers much was made of an agreement dated 12th September 1957 alleged to have been arrived at between the Singareni Collieries Company Ltd., and Singareni Collieries Workers' Union. The agreement as per copy, Ex. C-1, purports to be a private agreement between the management of the company and the Union on several questions connected with the implementation of the Colliery Award as modified by the Appellate Decision. On one of such questions relating to pushing allowance the agreement states:—

> "The rate of pushing allowance now allowed for pushing a tub to and fro is Rs. 0-1-0 in the case of a small tub and Re. 0-1-6 in the case of a large tub irrespective of the distance. With effect from 1st September 1957 it has been agreed that the fillers should be paid pushing allowance on the following basis to push to and fro and empty and a loaded tub.
>
> *Rate of allowance*
>
> For the first 100 feet irrespective of the distance—Rs. 0-06 Np. per tub irrespective of the size of the tub.
>
> For distances beyond 100 feet, for every 100 feet or part thereof—Rs. 0-06 Np. per tub irrespective of the size of the tub."

Placing reliance on the arrangement as embodied in this agreement, the company's representative argued that the matter having been so settled there was no difference between the parties on the point of interpretation on the date of the present Reference, namely 12th March, 1958. He even went to the extent of saying that in view of this settlement the present Reference is incompetent and for this purpose reliance was placed on a judgement of the Bombay High Court in the case of Poona Mazdoor Sabha *vs.* G. K. Dhutia (58 Bom. L. R. 817, 820,-1950-II LJ. 319). In my opinion the contentions raised on behalf of the employers are without much substance and there is nothing to affect the validity of the present Reference under which the point referred to has to be decided by this Tribunal as required under section 36A of the Industrial Disputes Act, 1947.

11. As already said above the colliery award has been published in the Gazette of India Extraordinary, Part II, Section 3 dated 26th May, 1956 by S.R.O. 1224, dated the 18th May, 1956 and the said award as modified by the decision dated 29th January, 1957 of the Labour Appellate Tribunal of India in the Collieries Appeals is still in force. Under the last notification issued for the purpose by the Government of India, Ministry of Labour and Employment the award as modified by the Labour Appellate Tribunal of India is to remain in force till 26th August, 1958 and as it is reported the period of its operation is to be further extended till May, 1959 or such other date as may be fixed by the Government. In any case it is an undisputed fact that when the company and the Union entered into the so-called agreement dated 12th September 1957, the award as modified by the Appellate decision was in force. Leaving aside the other matters dealt with in the agreement and confining our attention to the matter of pushing allowance with which we are now concerned, it is obvious that under the agreement in the name of the so-called implementation of the award, practically the award has been modified in so far as it relates to the payment of pushing allowance as directed in paragraph 652 thereof. This is not a settlement within the meaning of section 2(p) of the Industrial Disputes Act, 1947 nor has the Colllery Award been terminated by due notice before entering into such agreement. It is true that now under section 18(1) a settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement; and such a settlement need not necessarily be arrived at in the course of conciliation proceedings under the Act. In the case before us, however, it is not a matter of simple agreement between the employers and the workmen but the agreement in effect modifies the terms of a binding award still in force on the point of pushing allowance. It is doubtful if any such agreement can take away the binding effect of the provisions in paragraph 652 of the award so long as the award continues to remain in force. The entire scheme of the Industrial Disputes Act, 1947 proceeds on the award reaching a finality on its affirmation and publication by the Government as it can be seen from the provisions in sections 17, 17A, 18, 19 and 29 of the Act and I am unable to see any provision any-where that the terms of a binding award during its operative period could be modified by a private agreement between the parties without the award being terminated in the manner provided under law. Thus this agreement whatever it may be does in no way affect the validity of the present Reference.

12. The matter does not rest there. As it can be seen from the statement filed by the Union on behalf of the workmen, the agreement in the matter of pushing allowance has not been accepted by the Union and they have demanded that the arrangement in this connection should be given retrospective effect from 26th May, 1956 and not from 1st September, 1957 as mentioned in the agreement. The management disagreed on this point of retrospective effect and according to the Union the ground advanced by the management was that as the question of pushing allowance is pending before the Government for decision, any decision given by the Government would be followed by them. If we refer to the conclusion as embodied in the said agreement dated 12th September, 1957 it runs thus:

> "Both the parties noted that the Implementation Committee appointed by the Labour Ministry is going through certain issues brought before them by the Unions and the managements. If any general improvements are agreed upon (in) the industry, the question of application of similar benefits to the workers of Singareni Collieries Co., Ltd., will be discussed between the Management and the Union taking into account local conditions. Where conditions are identical the improvements introdced by the Implementation Committee would be implemented."

Thus the agreement by itself does not finally conclude the matter and though an attempt has been made thereby to forerun any decision being taken by the Government, indirectly it has been conceded that the decision given by the Government will be given effect to after a mutual discussion between the parties. Thus even leaving aside the question of binding effect of the agreement itself, the contents thereof indirectly suggest that certain questions were pending before the Government and if in the matter now before us, any difficulty or doubt had arisen in the opinion of the Government as to the interpretation of the provisions contained in paragraph 652 of the Colliery Award, it is empowered under Section 36A of the Industrial Disputes Act to refer the question to a Tribunal as it has done and the Tribunal under sub-section (2) is bound to decide such question, after giving the parties an opportunity of being heard, the word used being 'shall'. It is thus incorrect to say that there was no occasion for the Government to make the present Reference or that the present proceeding is redundant.

13. Moreover under sub-section (1) of 36A the matter of forming an opinion on the point of interpretation entirely rests in the discretion of the appropriate Government and it does not lie in the mouth of the employers to question the same. There appears to be some misapprehension on the part of the Company's representative in regard to nature of the present Reference. This is not a Reference for adjudication of an industrial dispute in respect of which there is already a binding award in operation under section 19 of the Act. In the aforesaid case before the Bombay High Court the parties had arrived at an amicable settlement which was recorded by the Conciliation Officer and hence the High Court held that an industrial dispute can neither be raised with regard to a matter which is the subject-matter of a settlement under section 12 read with S. 19(1) of the Industrial Disputes Act, 1947, nor can matters covered by that settlement form the subject-matter of conciliation proceedings under section 12 of the Act. The relevant remarks pertaining to an award in the said judgement are:—

> "Considerable light is also thrown upon the proper construction of S. 19(2) by the provisions contained in that section with regard to an award. An award is a super-imposed decision and the parties to the award have to abide by it whether they like the terms of the award or not, and in the case of an award specific powers are given to Government to curtail its duration, to extend it, and in cases where Government considers that since the award was made there has been a material change in the circumstances on which it was based, to refer the award or part of it to a Tribunal for decision whether the period of operation should not by reason of such change be shortened. Therefore, it is clear that but for this specific provision with regard to an award, the position of an award in law would have been the same as that of a settlement. An award being as binding in its nature as a settlement, the legislature had to give specific power to the Government to interfere with the finality of that award by empowering Government to refer it to a tribunal under circumstances mentioned in S. 194(4). If the subject-matter of an award or a settlement could be raised as an industrial dispute, then it is clear that there was no reason for the legislature specifically to confer power upon Government with regard to referring an award for adjudication."

A similar view has also been expressed by the Labour Appellate Tribunal of India at Calcutta in the case of Indian Industrial Works, Ltd., *vs.*, Engineering Mazdoor Sabha (1955-II LLJ. 675). The case before us is entirely different, namely one for interpretation under the newly inserted section 36A of the Act and if, in the opinion of the appropriate Government, any difficulty or doubt has arisen as to the correct interpretation of any provisions of an award, and it refers the question to a tribunal, it is not the function of the Tribunal to challenge or sit in judgement over the said opinion but it has to give its decision on such question as enjoined in sub-section (2). The case relied on by the employers, therefore, has no application here.

14. I have shown above how on correct interpretation of the provisions contained in paragraph 652 of the Colliery [illegible] vance at the rate of Rs. 0-1-0 is payable [illegible] for every tub pushed to the tramming point and any stand to the contrary by the employers that the pushing allowance at the rate of Re. 0-1-0 is payable irrespective of any distance is erroneous. Though the employers in the present case held such a view at one time, they themselves have given a go-bye to the same while providing for pushing allowance in the aforesaid agreement dated 12th September, 1957. There, of course, even for the first 100 feet irrespective of the distance they have agreed to pay Re. 0-06 Np., but otherwise for distances beyond 100' the pushing allowance is payable at the rate of Re. 0-06 Np. *i.e.* Re. 0-1-0 for every 100' or part thereof. I was told that the tubs are of two types small and big respectively 24 cft. and 36 cft. In paragraph 652 of the Colliery Award the tubs referred to are of 24 cft. each but in the agreement the rate of Rs. 0-06 Np: *i.e.* Re. 0-1-0 per tub has been made applicable irrespective of the size of the tub and probably that is why the employers have agreed to pay at the same rate irrespective of the distance even for the first 100 feet. Whatever it may be, what is material for our present purpose is that even while making this agreement the management could put no other interpretation except that for distance beyond 100 feet, pushing allowance was to be paid at the rate of Re. 0-1-0 for every 100 feet or part thereof.

15. In the result I hold that under the provisions contained in paragraph 652 of the award of the All India Industrial Tribunal (Colliery Disputes) popularly known as Colliery Award, a consolidated allowance of Rs. 0-1-0 is payable to fillers for every tub pushed to the tramming point according to distance *i.e.* for every 100 feet or part thereof in excess of the first 100 feet and I decide the question referred to accordingly.

The 6th August, 1958.

P. D. VYAS, Judge,
Central Government Industrial Tribunal,
Nagpur at Bombay.

K. D. HAJELA, Under Secy.